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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re
1 MIN, LLC; HOTEL AT SOUTHPORT,
LLC; and TWELFTH FLOOR, LLC,
Debtors.

Chapter 11
Lead Case No. 24-01519
(Jointly Administered)

LAN CAI, , et al.,
Plaintiffs,
v.
HOTEL AT SOUTHPORT, LLC, et al.,
LLC,
Defendants.

Adversary Case No. 25-80007

**PLAINTIFFS' OPPOSITION
TO AP DEFENDANTS'
MOTION TO DISMISS THE
COMPLAINT**

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1 Plaintiffs Lan Cai, Shujie Chen, Tianran Chen, Weijun Chen, Jie Chu,
2 Zhaojun Cong, He Cui, Jianying Ding, Jichun Du, Qing Du, Jieying Feng,
3 Yupeng Gao, Yiran Han, Jinyang Hu, Naixin Hu, Xiao Huang, Junmei Jin, Xin
4 Meng, Weihong Lu, Yuanyuan Ma, Min Pan, Lei Pei, Hao Qi, Xiao Rong, Juan
5 Shao, Hui Wang, Jingyi Wang, Yuquan Wang, Zidong Wang, Rongrong Wu,
6 Zhaohui Xu, Qi Xu, Jie Yan, Ke Yang, Qin Yang, Hongyun Yu, Shuxian Zeng,
7 Xiaohong Zhang, Ying Zhao, Minbo Zhou, Nan Zhou, Huiqing Zhu, Ziling
8 Zeng, Luyi Zhang, Jundi Liang, Tao Li, Yun Cai, Hongliang Tang, Jie Tang,
9 Wenlung Chen, Shi Zhang, Jun Che, Dahe Zhang, Shan Wan, Xiaohong Sun,
10 Yan Lyu a/k/a Yan Lu, Wenyan Wang, Jialin Tian, Rui Tang, Xinhan Lin, Siyu
11 Liu, Jianying Meng, Phuong Nguyen, Yeqing Pan, Xuerong Qi, Qiang Wang,
12 Junli Wei, Yunfei Wu, Hongying Yu, and Dongli Zhang, (collectively
13 “Plaintiffs,” each a “Plaintiff”), by and through undersigned counsel, file this
14 memorandum of law in support of Plaintiffs’ Opposition (“Opposition”) to the
15 Motion to Dismiss the Complaint (“Motion”) filed by debtor-defendants Hotel
16 At Southport, LLC (“Hotel Debtor”), Twelfth Floor, LLC (“Mezz Debtor”) and
17 1 Min, LLC, (“EB-5 Debtor” and, collectively with Hotel Debtor and Mezz
18 Debtor, the “Debtor-Defendants,” each a “Defendant” and WF CREL 2020
19 Grantor Trust (“WF Trust” or the “Mezz Lender” and, together with the Debtor-
20 Defendants, the “AP Defendants”)) and respectfully state as follows:

PRELIMINARY STATEMENT

1. AP Defendants argue that this case presents a “straightforward case of buyer’s remorse. . .” Mot. ¶ 1. Nothing could be further from the truth. Rather, Plaintiffs have been the victims of a coordinated effort by the Debtor-Defendants, Michael Christ and the other non-debtor defendants in the State Court Litigation¹ to defraud Plaintiffs and other EB-5 foreign investors in the Project, likely due to the fact that Plaintiffs and other EB-5 investors were viewed as low-cost sources of Project capital more interested in gaining U.S. citizenship than in recovering their investments in the Project.² Plaintiffs were

¹ Capitalized terms not otherwise defined shall have the meaning ascribed to such terms in the Complaint.

² The 9th Circuit has repeatedly rejected arguments that EB-5 investments are not securities even if some investors are primarily motivated by immigration concerns, rather than profit in the investment. *See, e.g., SEC v. Hui Feng*, 935 F.3d 721 (9th Cir. 2019) (investments made by EB-5 investors in common enterprises managed by regional center as part of [EB-5] immigrant investor program constituted securities under the Securities Act); *SEC v. Liu*, 754 F. App’s 505, 507 (9th Cir. 2018) (rejecting argument that EB-5 investments do

1 promised that their investments—via an EB-5 Loan made to the Hotel Debtor
2 entity—would be secured by the land under the Project and the Hotel Debtors’
3 other valuable Project assets. Instead, the EB-5 Loan was stripped of its valuable
4 collateral by the Hotel Debtor and ultimately subordinated to both a \$90 million
5 loan against the Hotel Debtor and a \$40 million loan against the Mezzanine
6 Debtor.

7 2. Had the representations made by the Debtor-Defendants and Mr.
8 Christ over the course of the financing and development of the Project been
9 accurate, Plaintiffs would have recovered in these Chapter 11 cases along with
10 all other secured creditors of the Hotel Debtor as secured creditors via the EB-
11 5 Loan. But a coordinated and fraudulent effort by the Debtor-Defendants and
12 Mr. Christ to subordinate the EB-5 Loan without Plaintiffs’ notice or
13 authorization resulted in the EB-5 Loan being fully subordinated to a total of
14 \$130 million of senior debt (\$90 million against the Hotel Debtor and \$40
15 million against the Mezz Debtor). This fraud cannot be permitted to be endorsed
16 by this Court and the Motion must be denied to permit Plaintiffs to pursue
17 allowance of their claims against each Debtor-Defendant.

18 _____
19 not constitute securities where the investors’ interest was to obtain visas rather
20 than profits).

1 3. AP Defendants' claim that this is a simple case of "buyer's
2 remorse" may have been plausible if the following risks had been accurately
3 disclosed to Plaintiffs: (i) that the borrower entity under the EB-5 Loan—the
4 Hotel Debtor entity that was disclosed in the business plan as the revenue
5 generating entity—could be replaced without notice to Plaintiffs by an entity
6 with no revenue two levels subordinated to the original borrower entity, (ii) that
7 the Project could cost nearly twice as much as initially disclosed (~\$134 million
8 vs. ~\$250 million), (iii) that the developer entities would be permitted to add up
9 to six times as much senior debt as disclosed (\$19 million vs. \$130 million), and
10 (iv) that the developer entities could withdraw up to \$35 million of their own
11 equity from the Hotel Debtor prior to filing these Chapter 11 cases.

12 4. But none of the Plaintiffs—nor any rational human being—would
13 have invested in a project in which the costs might balloon 2X, the leverage
14 might balloon 6X, and the developer parties would be able to take the full
15 amount of their investments out and leave the foreign investors holding a
16 worthless loan (against a completely different borrower entity) with no chance
17 of recovery. This is no case of buyer's remorse; this is a case of fraud that must
18 be permitted to be adjudicated on the facts, not dismissed prematurely.

19 5. The Motion repeatedly fails to treat the factual allegations of the
20 Complaint as true—as they must be treated on a motion to dismiss—and

1 fundamentally misapplies applicable 9th Circuit law to the facts of this adversary
2 proceeding. Defendants’ misleading arguments are most plainly exemplified by
3 the fact that AP Defendants appear to claim that Plaintiffs “conjured out of thin
4 air” a \$19 million limitation on the amount of construction loans that would be
5 permitted to subordinate the EB-5 Loan. Mot. ¶ 98. Even a cursory review of
6 the offering materials attached to Defendants’ own Motion reveals this exact
7 \$19 million amount referenced multiple times in the confidential offering
8 memorandum used to solicit Plaintiffs’ investment in the project.³ Plaintiffs
9 have not conjured their claims and supporting evidence “out of thin air” but
10 have instead asserted compelling claims with particularity relying on undisputed

11 _____
12 ³ Mot., Ex. 2, p. 106 (“Project Costs and Capitalization” (“Additional funding
13 for the project is \$19 million in traditional construction loan financing (and or
14 additional investment by Michal Christ and investors.”))); *Id.*, p. 122 (“Sources
15 and Uses of Funds” (“Up to \$115.5 million of the Project cost will be funded by
16 a loan from Southport Hotel Eb-5, LP. Additional funding for the project is \$19
17 million in traditional construction loan financing (and/or additional investment
18 by Michael Christ and investors). Lending institutions have already indicated
19 their interest in loaning the additional \$19 million necessary to fill the gap left
20 after Eb-5 investors contribute \$115.5 million. . .”)).

1 factual evidence currently available to Plaintiffs. Plaintiffs' detailed Complaint
2 far exceeds what is required to survive AP Defendants' Motion.

3 6. AP Defendants' arguments that Plaintiffs have failed to adequately
4 plead the elements of alter ego liability similarly fail. Plaintiffs have pled a
5 multitude of facts supporting a plausible claim that the corporate form of each
6 Debtor-Defendant in this case was intentionally used to violate or evade a duty
7 and that disregarding the corporate form is necessary and required to prevent
8 unjustified loss to the injured parties. *Lindsay Credit Corp. v. Skarperud*, 33
9 Wash. App. 766, 770-71 (1983). Moreover, the Complaint is replete with facts
10 establishing almost all of the factors courts in the 9th Circuit look to in assessing
11 whether alter ego claims have been sufficiently pled to survive a motion to
12 dismiss. A non-exhaustive list of these factors includes: (1) evidence of
13 commingling of funds, (2) undercapitalization, (3) unauthorized diversion of
14 funds, (4) treatment of corporate assets as the individual's own, and (5) failure
15 to observe corporate formalities. *See Exxon Mobile Corp. v. Freeman Holdings*
16 *of Washington, LLC*, No. CV-09-0390-EFS, 2011 WL 611705, at *3 (E.D.
17 Wash., Feb. 10, 2011) (discussing various factors courts look to in assessing
18 alter ego arguments at motion to dismiss stage and denying motion to dismiss
19 for failure to sufficiently plead alter-ego). As detailed *infra*, facts supporting
20 each of these factors have been sufficiently pled in the Complaint such that the

1 Court should accept the well-pled alter ego allegations and reject AP
2 Defendants' arguments for dismissal on these grounds.

3 7. Here, Plaintiffs' Complaint states that Mr. Christ, via his control
4 and domination of his alter egos, the Debtor-Defendants, committed fraud on
5 Plaintiffs by taking at least the following specific actions:

- 6 • Beginning in November of 2013, disseminating Offering
7 Documents to Plaintiffs with critical material misrepresentations,
8 including, *inter alia*, (i) misrepresenting the identity of the
9 Borrower as the Hotel Debtor (which would be quickly replaced
10 with a completely different, less valuable entity, the EB-5 Debtor);
11 and (ii) misrepresenting the fact that the amount of senior
12 construction loans "is" \$19 million and that the project cost "is"
13 \$134,571,760, Compl. ¶¶ 32 – 41;
- 14 • Instructing that Plaintiffs' investment funds be wired directly to the
15 General Partner's bank accounts in Mr. Christ's name, rather than
16 the Partnership's bank accounts where the funds should have been
17 wired, Compl. ¶ 42;
- 18 • Failing for more than 6 years to inform Plaintiffs that their EB-5
19 Loan had been subordinated not by \$19 million as originally
20 disclosed, but by \$130 million (including approximately \$90

1 million of senior loans and approximately \$40 million of
2 mezzanine loans), until finally disclosing such information in
3 January 2023 when the loans senior to the EB-5 Loan were already
4 in default with an inability to refinance, Compl. ¶¶ 46-47; and

- 5 • Withdrawing up to \$35.3 million from the project prior to
6 repayment of the EB-5 Loan, Compl. ¶¶ 9, 66, 92, 105.

7 These specific and detailed factual allegations are sufficient to satisfy the
8 particularity requirements for pleading fraud claims.

9 8. AP Defendants' arguments that Plaintiffs have failed to plausibly
10 allege the remaining causes of action similarly fail. As noted *supra*, Plaintiffs
11 have plausibly alleged that each Debtor-Defendant is the alter ego of Michael
12 Christ and the General Partner. The General Partner owed and continues to owe
13 fiduciary duties to Plaintiffs as limited partners of the Partnership. Plaintiffs
14 have adequately alleged in the Complaint that each Debtor-Defendant aided and
15 abetted the General Partner in breaching its fiduciary duties to Plaintiffs,
16 specifically by (1) causing the deed of trust securing the EB-5 Loan to be
17 released, thereby removing the collateral promised to Plaintiffs as security for
18 the EB-5 Loan, Compl. ¶¶ 80, 93, (2) withdrawing equity from the project in an
19 amount up to \$35.3 million, Compl. ¶ 105, and (3) failing for six years to
20 disclose to Plaintiffs that the EB-5 Loan had been subordinated to a senior loan

1 in the amount of \$130 million, Compl. ¶ 107. These factual allegations have
2 been plead with sufficient particularity to satisfy the pleading requirements for
3 breach of fiduciary duty and aiding and abetting breach of fiduciary duty claims
4 as asserted in the Complaint.

5 9. Ultimately, the Court should reject the underlying theme of AP
6 Defendants' Motion, that each of the Debtor-Defendants and the Mezz Lender
7 are "innocent" third parties and the only potentially culpable party is non-debtor
8 Michael Christ. Mot. ¶ 13. AP Defendants go so far as to claim that the Debtor-
9 Defendants have "*no* affiliation with the partnership or its Offering," Mot. ¶ 4,
10 a demonstrably untrue assertion given the ownership structure of the Project
11 entities controlled by Michael Christ and the fact that the Hotel Debtor (through
12 Mr. Christ as signatory) signed both the original EB-5 Loan (a loan in which
13 Mr. Christ was signatory for both the original borrower entity and the lender
14 entity) and the subsequent release of the EB-5 Deed of Trust and 2017 Loan
15 Modification and Assignment. The complete control of each of these entities by
16 Mr. Christ is undeniable and AP Defendants should not be permitted to hide
17 behind the fiction that each transaction intended to harm Plaintiffs was an arms-
18 length transaction between unaffiliated entities.

19 10. Finally, Defendants' misguided argument that Plaintiffs somehow
20 assumed the risk of the full loss of their investment through the Offering

1 Documents must be rejected. Mot. ¶ 3. Here, Plaintiffs were misled and
2 fraudulently induced to invest in the Project from the minute they received the
3 initial Offering Documents. Not only were they led to believe that their
4 investment would be secured by a deed of trust on the land underlying the
5 Project, but they were led to believe that the borrower entity for the EB-5 Loan
6 would be a revenue-generating hotel operating company. Instead, what
7 Plaintiffs got was a quick substitution of their borrower entity with a non-
8 revenue generating entity two levels subordinated to the hotel debtor, a release
9 of the deed of trust securing the EB-5 Loan by the Hotel Debtor, a \$30+ million
10 equity withdrawal from the project to increase the leverage, and a 6X increase
11 in the leverage on the project they were told to expect.

12 11. The Debtor-Defendants similarly should not be permitted to escape
13 liability here simply because the Offering Documents disclosed generally that
14 Plaintiffs could lose their investments in the Project. Plaintiffs assumed the risk
15 that their EB-5 Loan to the Hotel Debtor entity could fail if the Hotel Debtor
16 failed to generate sufficient revenue; they did not assume the risk that their EB-
17 5 Loan would be so critically modified as to be given a completely different
18 borrower entity or that the developer entities, including each of the Debtor-
19 Defendants, would be used as instrumentalities of Mr. Christ to ensure that Mr.
20 Christ, the prior senior lenders and the Mezz Lender would get paid before the

1 EB-5 Loan received a penny of recovery. Plaintiffs are not arguing that they did
2 not assume the risk that the Project would fail for ordinary economic reasons.
3 But this Project did not fail for ordinary economic reasons; it failed because of
4 purposeful and coordinated financial engineering and fraud orchestrated by Mr.
5 Christ and perpetrated by each of the Debtor-Defendants.

6 12. AP Defendants would have this Court believe Plaintiffs should
7 have no recourse other than a state court action against a potentially judgment-
8 proof Mr. Christ. But this cannot be the case; each of the Debtor-Defendants
9 was a critical instrument of Mr. Christ's fraud and potentially the only
10 recoverable assets for Plaintiffs reside with the set-aside funds at the Hotel
11 Debtor entity. But for the undisclosed and unauthorized substitution of the EB-
12 5 Loan borrower entity (replacing Hotel Debtor with EB-5 Debtor 1 Min LLC),
13 Plaintiffs would have recovered in these Chapter 11 cases before the Mezz
14 Debtor and before all other unsecured creditors of the Debtor-Defendants, as
15 they were promised when they invested in the Project. Each of the Debtor-
16 Defendants was intimately involved, through Mr. Christ's control, in
17 perpetrating this fraud and should not be permitted to escape liability as a result
18 of these Chapter 11 cases (also filed at the direction of Mr. Christ). No amount
19 of risk disclosures in the Offering Documents should permit the Debtor-
20 Defendants to escape liability for this coordinated fraudulent conduct.

1 13. The Court should deny the AP Defendants' Motion in its entirety
2 and allow the parties to continue to pursue discovery and proceed to a hearing
3 to adjudicate allowance of Plaintiffs' claims at the currently scheduled June 10,
4 2025 hearing.

5 **FACTUAL BACKGROUND**

6 14. Plaintiffs incorporate by reference the factual history of this matter
7 as set forth in the Complaint.

8 15. For the convenience of the Court, Plaintiffs summarize the key
9 factual assertions set forth in the Complaint that provide evidentiary support for
10 Plaintiffs' claims in the Complaint as follows:

- 11 • Plaintiffs are seventy (70) foreign investors who each invested
12 through the USCIS EB-5 Program in a project to develop a 12-
13 story Hyatt Regency Hotel in Renton, Washington (the "Project").
14 Compl. ¶ 5.
- 15 • State Court Defendant Michael Christ and his directly or indirectly
16 owned development entities acted as the primary developer of the
17 Project when it was solicited to foreign investors including
18 Plaintiffs and through the date of these Chapter 11 cases. At all
19 relevant times, Mr. Christ owned, controlled and managed each of
20 the Debtor-Defendants and, through control of State Court

1 Defendant Seattle Family, LP (the “General Partner”), managed
2 and controlled Southport Hotel EB-5 LP (the “Partnership”), the
3 partnership entity into which each Plaintiff was intended to invest
4 to fund the Project. Compl. ¶ 4.

- 5 • The Project was solicited to potential foreign investors, including
6 Plaintiffs, as an EB-5 qualified investment opportunity whereby
7 Plaintiffs and other foreign investors could potentially attain a U.S.
8 green card in exchange for a qualifying investment in the Project,
9 including the creation of at least 10 jobs per investors as required
10 by the EB-5 program. Compl. ¶¶ 2-3.

- 11 • Each Plaintiff signed a subscription agreement and partnership
12 agreement, agreeing to invest \$500,000 and a \$50,000
13 administrative fee in exchange for a membership interest in the
14 Partnership that would ultimately act as the EB-5 Lender to the
15 Hotel Debtor entity. Compl. ¶ 41.

- 16 • At the time each Plaintiff invested, Michael Christ sent instructions
17 to each Plaintiff to directly wire the investment funds to an account
18 in the name of the General Partner entity, Seattle Family LP, with
19 wiring instructions to an account ending in 4066 held in the name
20 of “Seattle Family LP dba Michael Christ.” Compl. ¶ 42.

- 1 • The Offering Documents represented that the EB-5 Loan would be
2 secured by a deed of trust (the “EB-5 Deed of Trust”) on the land
3 owned by Hotel Debtor on which the Project would be constructed.
4 Compl. ¶ 7.
- 5 • The Offering Documents also represented that the EB-5 Deed of
6 Trust would only be subordinated to a senior construction loan (or
7 additional equity investment) of no more than \$19 million. Compl.
8 ¶ 8. The Offering Documents stated that “Additional funding for
9 the project *is* \$19 million in traditional construction loan financing
10 (and/or additional investment by Michael Christ and investors).”
11 (emphasis added) Mot., Ex. 2, p. 122.
- 12 • In January of 2017, Michael Christ and the Debtor-Defendants
13 entered into a senior construction loan of \$73 million (the “2017
14 Loan”). Compl. ¶ 53.
- 15 • Unbeknownst to Plaintiffs, in connection with entering into the
16 2017 Loan, Hotel Debtor released the deed of trust securing the
17 EB-5 Loan and caused itself to be replaced as the Borrower entity
18 under the EB-5 Loan, all without Plaintiffs’ notice or consent.
19 Critically, this meant that Hotel Debtor was no longer the Borrower
20 under the EB-5 Loan and the Borrower entity was substituted to be

1 the EB-5 Debtor (1 Min, LLC) pursuant to a Loan Modification
2 and Assumption Agreement, dated as of January 27, 2017. Compl.
3 ¶ 93; Mot. Ex. 6 (Plan) (“EB-5 Loan Agreement” definition). This
4 critical substitution of the EB-5 Loan borrower entity directly
5 contradicted all representations regarding the Borrower, its
6 revenue generating capabilities and the business plan disclosed to
7 Plaintiffs in the Offering Documents. Nowhere in the Offering
8 Documents was it disclosed that the EB-5 Loan borrower entity
9 could be replaced by a less valuable entity, notwithstanding the fact
10 that this was a fundamental component of the Project and
11 Plaintiffs’ decision to invest in the Project.

- 12 • In December of 2017, the 2017 Loan was refinanced with a larger
13 construction loan in the amount of \$80 million (the “2018 Loan”).
14 Compl. ¶ 54. In conjunction with entering into the 2018 Loan, the
15 Mezz Debtor obtained a loan from Argentic Real Estate Investment
16 LLC in the amount of \$25,000,000 (the “Original Mezz Loan”).
- 17 • In November 2019, the 2018 Loan was again refinanced with a \$90
18 million senior loan (the “2019 Loan”). Compl. ¶ 55.
19 Simultaneously, the Mezz Debtor obtained a loan from the original
20 mezzanine lender, AIP US Red Private Real Estate Trust No. 200

1 in the amount of \$40,000,000, which refinanced the Original Mezz
2 Loan (the “Mezz Loan”). Mot. ¶ 31. As a result of the refinancings
3 to enter into the 2019 Loan and the Mezz Loan, the EB-5 Loan was
4 effectively subordinated by \$130 million as of 2019.

- 5 • At the time that Debtor-Defendants, through the control of Mr.
6 Christ, entered into the 2019 Loan and Mezz Loan, the Hotel had
7 been operating for more than two years, was generating sufficient
8 cash flow to satisfy its existing debt load, and had no construction
9 costs or other financial obligations that would justify the need for
10 the increase in outstanding principal amounts for both the senior
11 loan and Mezz Loan. The 2019 loan refinancings post-dated
12 construction of the hotel by two years and pre-dated the COVID-
13 19 pandemic, so neither construction costs nor a pandemic can be
14 used as plausible justifications for the refinancings. Instead, the
15 refinancings were intended to permit the Debtor-Defendants to
16 cover up the fact that Mr. Christ had withdrawn his equity from the
17 project after subordinating the EB-5 Loan. Each Debtor-Defendant
18 participated in this scheme, the Hotel-Debtor by executing the loan
19 agreements for the 2019 Loan, the Mezz Debtor by executing the
20 loan agreements for the Mezz Loan, and the EB-5 Debtor, by

1 agreeing to further subordinate the EB-5 Loan to a total of at least
2 \$130 million of debt.

- 3 • Michael Christ, via his control of the Debtor-Defendants, is
4 believed to have orchestrated a transfer of funds out of the Hotel
5 Debtor's bank accounts to his personal accounts in an amount up
6 to \$35.3 million. Compl. ¶¶ 9, 65. The exact dates and amounts of
7 these transfer(s) are unknown to Plaintiffs but are expected to be
8 ascertainable through discovery.
- 9 • Plaintiffs were not informed by any developer party, including Mr.
10 Christ or any of the Debtor-Defendants, until 2023 of the fact that
11 \$130 million in loans senior to the EB-5 Loan had been added to
12 the Hotel Debtor's balance sheet or that such senior loans would
13 subordinate the EB-5 Loan, even though Mr. Christ and the
14 Debtor-Defendants had begun to add these senior loans in 2017.
15 Compl. ¶ 46.
- 16 • Plaintiffs were informed in 2023 that the \$130 million of additional
17 loan financing senior to the EB-5 Loan was necessary due to
18 "unexpected cost increases" in developing the Project and because
19 Defendants were required to upgrade the original hotel design to
20 satisfy requirements of the Hyatt Regency brand. Compl. ¶ 58.

- Hyatt Regency’s own documents indicate that the maximum cost to develop a 500 room Hyatt Regency Hotel as of 2017 should be no more than \$144.59 million, yet the 347 room hotel at issue in this case cost approximately \$250 million to build. Compl. ¶ 58-62.
- The Hotel Debtor ultimately defaulted on the EB-5 Loan and filed these Chapter 11 cases along with the other two Debtor-Defendants.

16. On September 20, 2024, these Chapter 11 Cases were filed. A joint plan of reorganization (the “Plan”) was confirmed on November 27, 2024. The Plan established a reserve amount held at the Hotel Debtor entity for possible satisfaction of Plaintiffs’ claims in this adversary proceeding in the amount of \$32.45 million. Compl. ¶ 22.

17. Plaintiffs filed a proof of claim in the Chapter 11 Cases on November 4, 2024, which was supplemented to reference this adversary proceeding complaint and to include all Plaintiffs named in the Complaint (the “Proof of Claim”).

18. Plaintiffs commenced this Adversary Proceeding on January 31, 2025 by filing a Complaint seeking, *inter alia*, allowance of their Proof of Claim against each Debtor-Defendant. Compl. at 31-32.

1 19. On February 19, 2025, Defendants filed their Motion to Dismiss,
2 arguing that the Complaint fails to state a claim upon which relief can be granted
3 pursuant to Federal Rule of Civil Procedure 12(b)(6), made applicable to this
4 proceeding by Federal Rule of Bankruptcy Procedure 7012.

5 **APPLICABLE STANDARDS**

6 20. The Federal Rules of Civil Procedure apply to bankruptcy
7 adversary proceedings through the Bankruptcy Rules of Procedure.
8 Specifically, Bankruptcy Rule 7012 incorporates Civil Rule 12(b)(6) motions to
9 dismiss. *In re Consol. Pioneer Mortg. Entities*, 166 F.3d 342, 344 (9th Cir.
10 1999). Similarly, Bankruptcy Rule 7008 incorporates Civil Rule 8, which
11 governs general pleading standards, and Bankruptcy Rule 7009 incorporates
12 Civil Rule 9, which applies to fraud claims. *In re Daewoo Motor Am., Inc.*, 471
13 B.R. 721, 732 (C.D. Cal. 2012).

14 21. In evaluating a motion to dismiss under Rule 12(b)(6), the court
15 must accept all well-pleaded factual allegations in the complaint as true and
16 construe them in the light most favorable to the plaintiff. *Bell Atl. Corp. v.*
17 *Twombly*, 550 U.S. 544, 555-56 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678
18 (2009); *Holden v. Hagopian*, 978 F.2d 1115, 1118 (9th Cir. 1992). The
19 complaint need only contain “a short and plain statement of the claim showing
20 that the pleader is entitled to relief,” Fed. R. Civ. P. 8(a)(2), and need not contain

1 detailed factual allegations. *Twombly*, 550 U.S. at 555. A claim is facially
2 plausible when the plaintiff pleads factual content that allows the court to draw
3 the reasonable inference that the defendant is liable for the misconduct alleged.
4 *Iqbal*, 556 U.S. at 678; *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir.
5 2009).

6 22. For fraud claims, Rule 9(b) requires that “a party must state with
7 particularity the circumstances constituting fraud or mistake,” although “malice,
8 intent, knowledge, and other conditions of a person's mind may be alleged
9 generally.” Fed. R. Civ. P. 9(b); *In re GlenArbor Partners, LLC*, 582 B.R. 843,
10 857 (Bankr. E.D. Cal. 2018). A pleading “is sufficient under Rule 9(b) if it
11 identifies ‘the circumstances constituting fraud so that the defendant can prepare
12 an adequate answer from the allegations.’” *Neubronner v. Milken*, 6 F.3d 666,
13 673 (9th Cir. 1993). The pleading must state “enough fact[s] to raise a
14 reasonable expectation that discovery will reveal evidence of [the misconduct
15 alleged].” *Cafasso, U.S. ex rel. v. General Dynamics C4 Systems, Inc.*, 637 F.3d
16 1047, 1055 (9th Cir. 2011)

17 23. In the bankruptcy context, the Ninth Circuit has consistently held
18 that creditors need not prove their case at the pleading stage but rather must only
19 provide sufficient notice of the claims against the debtor. *In re Khachikyan*, 335
20 B.R. 121, 125 (9th Cir. BAP 2005). Moreover, the Ninth Circuit has held that

1 courts should be particularly reluctant to dismiss complaints in the bankruptcy
2 context. *In re Rogstad*, 126 F.3d 1224, 1228 (9th Cir. 1997) (noting the liberal
3 standards for pleading in bankruptcy proceedings).

4 **ARGUMENT**

5 **I. Plaintiffs Have Asserted Sufficient Facts to Satisfy Applicable Alter 6 Ego Pleading Requirements**

7 **A. Plaintiffs Have Adequately Alleged That the Debtor- 8 Defendants Are Alter Egos of Michael Christ and the EB-5 9 Lender**

10 24. The Ninth Circuit has held that the alter ego doctrine can be applied
11 to pierce the corporate veil in bankruptcy when necessary to prevent fraud or
12 injustice. *Towe Antique Ford Found. v. IRS*, 999 F.2d 1387, 1390-91 (9th Cir.
13 1993). To successfully pierce the corporate veil, a plaintiff generally must
14 demonstrate that (i) the corporate form was intentionally used to violate or evade
15 a duty and (ii) the piercing is necessary to prevent unjustified loss to the injured
16 party. *Lindsay Credit Corp. v. Skarperud*, 33 Wash. App. 766, 770-71 (1983).

17 25. “Although there is no precise litmus test for determining when
18 there is unity of interest and ownership for purposes of alter-ego liability, the
19 following factors are considered relevant: co-mingling of funds,
20 undercapitalization, unauthorized diversion of funds, treatment of corporate
assets as the individual’s own, and failure to observe corporate formalities.”
Polaris Indus. Corp. v. Kaplan, 747 P.2d 884, 887 (Nev. 1987). Because no one

1 factor is determinative, a court's inquiry is fact-intensive and must rely heavily
2 on the particular circumstances of each case. *See Mesler v. Bragg Mgmt. Co.*,
3 702 P.2d 601, 606 (Cal. 1985). Allegations of two or three factors have been
4 held sufficient to defeat a 12(b)(6) motion to dismiss. *See e.g., Axon Solutions,*
5 *Inc. v. San Diego Data Processing Corp.*, No. 09 CV 2543 JM (RBB), 2010
6 WL 1797028, at *3 (S.D. Cal., May 4, 2010) (denying motion to dismiss alter-
7 ego claim when the plaintiff pled commingling of funds, undercapitalization,
8 and representation by one entity that is liable for the other's debts).

9 26. There should be no doubt that Plaintiffs have satisfied the two
10 prong test of whether the corporate veil can potentially be pierced or disregarded
11 here. *First*, Plaintiffs have plausibly alleged in multiple instances in the
12 Complaint that the corporate form was intentionally used to violate or evade a
13 duty. *Lindsay Credit Corp.*, 33 Wash. App. 766, 770 (1983). Mr. Christ and the
14 General Partner, through the domination and control of each of the Debtor-
15 Defendants used each of the Debtor-Defendants as an instrumentality to violate
16 their duties to the Plaintiffs, including, *inter alia*, fiduciary duties of loyalty and
17 care. Specifically, the Complaint alleges that Mr. Christ intentionally used the
18 Debtor-Defendants and the General Partner to (1) make material representations
19 to induce Plaintiffs to invest in the Project, (2) conceal his intent to take funds
20 out of the Project and replace the withdrawn funds with loans senior to the EB-

1 5 Loan, (3) misuse Project funds for purposes unrelated to the Project, (4)
2 release the EB-5 Deed of Trust, and (5) violate books and records obligations
3 owned to Plaintiffs. Compl. ¶ 80. *Second*, Plaintiffs have plainly established that
4 piercing the corporate veil is necessary to prevent unjustified loss to the injured
5 party. Without an ability to recover against the Hotel Debtor's assets—the exact
6 assets that were promised to act as collateral for the EB-5 Loan when Plaintiffs
7 invested—Plaintiffs would be potentially left with no recovery and valueless
8 claims against Mr. Christ in state court. Recovering against the Debtor-
9 Defendants is critical because Plaintiffs' investment funds were (mis)used to
10 construct the Project, then Plaintiffs' collateral was removed and Plaintiffs' only
11 source of recovery was a valueless EB-5 Loan against a parent company (1 Min
12 LLC) twice removed from the originally promised source of Plaintiffs'
13 collateral. To endorse this fraudulent activity and permit the Debtor-Defendants
14 to escape liability to Plaintiffs because the Debtor-Defendants unilaterally
15 stripped Plaintiffs' source of collateral and recovery (without consent or
16 authorization) would be a grave injustice for Plaintiffs. This fact pattern
17 demonstrates the exact scenario in which the corporate form must be
18 disregarded to prevent injustice.

19 27. With respect to the detailed factors that courts look to in assessing
20 whether there is plausible evidence to support an alter ego theory of liability,

1 the Complaint pleads factual allegations with particularity to satisfy the factors
2 courts look to in assessing whether alter ego claims have been pled sufficiently
3 to survive a motion to dismiss. *First*, Plaintiffs have pled that Mr. Christ,
4 through various transactions among his directly or indirectly owned Project
5 entities, has left the Debtor-Defendants undercapitalized. This is most plainly
6 evidenced by the fact that the Debtor-Defendants filed for Chapter 11
7 protection, *prima facie* evidence of undercapitalization, and further evidenced
8 by the fact that Mr. Christ is alleged to have withdrawn funds from one or more
9 of the Debtor-Defendants prior to the Petition Date. Compl. ¶¶ 65-66, 105 (“If
10 the Defendants hadn’t taken the \$35.3 million funds from the Project, artificially
11 inflated the construction budget, and replaced the withdrawn equity funds with
12 senior loans, they would not have defaulted on the senior loans and would not
13 be at risk of foreclosure.”). *Second*, Plaintiffs have plausibly pled that Mr. Christ
14 has commingled funds and failed to treat the General Partner and Partnership as
15 separate corporate entities by diverting Plaintiffs’ investment funds
16 immediately to his own bank account at the General Partner entity, rather than
17 the Partnership bank account that was the appropriate entity at which Plaintiffs’
18 investments should have been held prior to the Partnership making the EB-5
19 Loan to the Hotel Debtor. Compl. ¶¶ 42, 82. Moreover, the fact that the original
20 Borrower under the EB-5 Loan, Hotel Debtor, was replaced with no notice to

1 Plaintiffs by the EB-5 Debtor, 1 Min, LLC, an entity with no revenue generation
2 abilities and wholly reliant on equity distributions from both Hotel Debtor and
3 Mezz Debtor, is itself evidence of disregard of the separateness of corporate
4 entities. *Finally*, Mr. Christ's withdrawal of his equity from the Project
5 companies also qualifies as an "unauthorized diversion of funds" and/or
6 "treatment of corporate assets as the individual's own," two of the other factors
7 that courts look to in assessing whether alter ego claims have been sufficiently
8 pled. Plaintiffs submit that these facts alone are sufficient as a matter of law to
9 overcome AP Defendants' arguments that Plaintiffs have failed to adequately
10 plead their alter ego claims.

11 28. Finally, Plaintiffs note that AP Defendants' argument that
12 Plaintiffs have not "explained why they have failed to first litigate their claims
13 against Mr. Christ or the General Partner before invoking the extraordinary
14 remedy of corporate disregard to attempt to hold *unaffiliated* parties liable for
15 his purported torts," Mot. ¶ 61, is a stunning statement given the fact that
16 *Plaintiffs had commenced state court litigation against Michael Christ and the*
17 *other Non-Debtor parties prior to these Chapter 11 Cases and were only forced*
18 *to pursue these actions against the Debtor-Defendants in this Court because the*
19 *Debtor-Defendants chose to file these Chapter 11 cases.* It is nearly
20 incomprehensible that AP Defendants are purportedly claiming ignorance as to

1 why Plaintiffs would pursue these claims in this Court against the Debtor-
2 Defendants when AP Defendants are well aware that the only reason these
3 claims are not being pursued against the Debtor-Defendants in state court is
4 because the Debtor-Defendants chose to file these Chapter 11 cases and
5 therefore force Plaintiffs to pursue these claims in this Court. Such arguments
6 should be ignored entirely.

7 **B. The Mezz Lender Is Getting Exactly the Benefit of Its Bargain**
8 **and Cannot Plausibly Argue That It Is Prejudiced by The**
9 **Court Allowing Claims Against Any of the Debtor-Defendants**

10 29. AP Defendants next mistakenly argue that because Plaintiffs assert
11 no claims against Mezz Lender in the Complaint, Mezz Lender is therefore an
12 “innocent third party” that is being prejudiced or harmed by the delay in
13 distribution of the Hotel Debtors’ reserve funds. Mot. ¶¶ 63-66. AP Defendants
14 cite 9th Circuit Case law in which some courts have held that reverse veil
15 piercing is not appropriate where “innocent third parties” would be prejudiced.
16 Mot. ¶ 64. Tellingly, however, AP Defendants cite only one bankruptcy case for
17 this proposition, a case in which the bankruptcy court permitted veil piercing
18 under an alter ego theory. *In re Brugnara Props VI*, 606 B.R. 371 (Bankr. N.D.
19 Cal. 2019). AP Defendants cite no bankruptcy case similar to the present action
20 in which a bankruptcy court rejected or disallowed claims with veil piercing or
reverse veil piercing elements because an “innocent” third party creditor would

1 potentially be delayed in receiving payment in the Chapter 11 cases.

2 30. Plaintiffs submit that AP Defendants' argument that veil piercing
3 claims cannot survive a motion to dismiss if there is an "innocent creditor" can
4 be dismissed outright because AP Defendants' argument relies on a
5 fundamentally flawed interpretation of bankruptcy law. AP Defendants argue
6 that Plaintiffs are *intentionally* harming Mezz Lender by "diverting sales
7 proceeds owed to the Mezz Lender, as secured lender." Mot. ¶ 65. But this
8 argument relies on a fundamental misunderstanding of Chapter 11 law and the
9 facts of this case. Mezz Lender is not "owed" anything by Hotel Debtor, the
10 entity where the \$32.45 million disputed claims reserve is held. Mezz Lender,
11 in its distinct role as senior lender to the Hotel Debtor has already been paid in
12 full from the assets of Hotel Debtor. While the Mezz Lender *happens* to have
13 acted as a lender to both the Hotel Debtor and Mezz Debtor, there should be no
14 conflation of these two distinct roles.⁴

15 _____
16 ⁴ As noted *supra*, as of the Petition Date, the same entity owned the Senior Loan
17 and the Mezzanine Loan. But this ownership overlap should not be mistaken to
18 permit the Mezz Lender to argue that it is being harmed as a creditor of the Mezz
19 Debtor entity simply because the claims allowance process at the Hotel Debtor
20 entity has not concluded.

1 31. Mezz Lender, in its role as mezzanine lender to the Mezz Debtor
2 is only “owed” funds available to the Mezz Debtor entity, if any, after all
3 allowed claims against the Hotel Debtor have been satisfied in full. This
4 fundamental fact is the result of both the organizational structure of the Debtor-
5 Defendants (the Mezz Debtor owns the equity of the Hotel Debtor and therefore
6 any distributions to the Mezz Debtor entity require allowance and distribution
7 or disallowance of all non-equity claims at the Hotel Debtor entity) and the
8 absolute priority rule of the Bankruptcy Code. 11 U.S.C. § 1129(b)(2). Mezz
9 Debtor’s argument, taken to its logical conclusion, is essentially that veil
10 piercing (or reverse veil piercing) claims can never be brought in a multi-debtor
11 chapter 11 case because such claims could potentially *delay payment to equity*
12 *holders or creditors of another debtor* in the same Chapter 11 case. None of the
13 cases cited by AP Defendants regarding the “innocent party” doctrine stand for
14 this proposition, nor is this a plausible application of this doctrine to these
15 Chapter 11 cases.

16 32. Mezz Lender agreed to make a loan to the Mezz Debtor, knowing
17 full well that all claims against the Hotel Debtor entity would need to be satisfied
18 before the equity owner of Hotel Debtor (the Mezz Debtor) would receive any
19 distribution that could potentially be applied to satisfy the Mezz Loan. The
20 additional risk that the Mezz Debtor knowingly assumed (and received a higher

1 interest rate for) is *exactly the risk* that the Hotel Debtor would have additional
2 claims or liabilities that would *de facto* subordinate the recovery of the Mezz
3 Lender's mezzanine loan to the Mezz Debtor. The fact that these claims are
4 potentially held by Plaintiffs does not in any way make the Mezz Lender more
5 "innocent" or somehow permit the Mezz Lender to claim that it has not received
6 the benefit of its bargain in making a structurally subordinated loan. Such
7 arguments should be dismissed outright.

8 33. This argument is especially ironic given the fact that the EB-5 Loan
9 itself should have been senior to the Mezz Loan at all points in time, but for the
10 unauthorized release of the Deed of Trust and replacement of the Hotel Debtor
11 as Borrower with the EB-5 Debtor. If any party is harmed or prejudiced in this
12 case, it is plainly Plaintiffs, not the Mezzanine Lender who knowingly invested
13 in a subordinate position (and received a higher return on its capital in exchange
14 for this risk).

15 **II. Plaintiffs Have Adequately Alleged Facts to Plausibly Support Their** 16 **Fraud Claims**

17 **A. Each Debtor Defendants' Role in the Alleged Fraudulent** 18 **Scheme Has Been Identified**

19 34. AP Defendants next argue that Plaintiffs have failed to allege facts
20 to plausibly support their fraud claims, asserting that the Complaint lacks
individualized factual allegations of fraud. However, as AP Defendants' own

1 Motion admits, 9th Circuit courts have permitted pleadings to survive a motion
2 to dismiss so long as the Complaint identifies the applicable “role of each
3 defendant in the fraudulent scheme.” Mot. ¶¶ 72-73 (citing *United States ex rel.*
4 *Pecanic v. Sumitomo Elec. Interconnect Prods.*, No. 12-cv-602, 2013 U.S. Dist.
5 LEXIS 27913, at *14 (S.D. Cal., Feb 28, 2013)).

6 35. Here, each Debtor-Defendants role in the fraudulent scheme is
7 identified in the Complaint. The Hotel Debtor entity was the original borrower,
8 was disclosed in the Offering Documents as the entity that would be the
9 Borrower for the EB-5 Loan, and caused or permitted itself to release the
10 original deed of trust securing the EB-5 Loan. Compl. ¶ 5 (identifying Hotel
11 Debtor as the original borrower), ¶ 38 (“Among other things, the Plaintiffs were
12 promised that their subscription funds would be loaned to the Borrower [Hotel
13 Debtor] to develop the Project . . .). 1 Min, LLC is disclosed in the Complaint
14 as the 100% owner of Debtor-Defendant Twelfth Floor, LLC. Compl. ¶¶ 13-14.
15 1 Min, LLC was ultimately replaced as the Borrower under the EB-5 Loan,
16 without any notification, consent or authorization of Plaintiffs. Twelfth Floor,
17 LLC is the Mezzanine Debtor and was created to act as a Mezzanine Debtor,
18 senior to the EB-5 Loan, and therefore further structurally subordinate the
19 potentially recovery for the EB-5 Loan, and therefore, Plaintiffs.

20 36. In addition, to the degree the Court believes each defendant’s role

1 in the fraudulent scheme must be pled with additional particularity, Plaintiffs
2 will provide such additional particularity as discovery develops via an amended
3 complaint, as discussed *infra*.

4 **B. Each Element of Washington Common Law Fraud Has Been**
5 **Alleged**

6 37. AP Defendants next argue that Plaintiffs have failed to adequately
7 and plausibly allege the elements of fraud under Washington common law. Mot.
8 ¶¶ 75-78. But this is not so. Plaintiffs have plausibly satisfied each of the
9 elements of fraud under Washington state law.

10 38. To state a claim for common-law fraud in Washington State, a
11 plaintiff must allege “(1) representation of an existing fact; (2) materiality; (3)
12 falsity; (4) the speaker’s knowledge of its falsity; (5) intent of the speaker that
13 it should be acted upon by the plaintiff; (6) plaintiff’s ignorance of its falsity;
14 (7) plaintiff’s reliance on the truth of the representation; (8) plaintiff’s right to
15 rely upon it; and (9) damages suffered by the plaintiff.” *Adams v. King County*,
16 164 Wash. 2d 640, 192 P.3d 891, 902 (2008).

17 39. Here, plaintiffs have plausibly satisfied each of these elements
18 through their plain allegations that Debtor-Defendants made materially false
19 representations in the Offering Documents. *See, e.g.*, Compl. ¶¶ 38-41
20 (summarizing specific representations made in the Offering Documents and

1 stating that Plaintiffs each relied on these representations and invested \$550,000
2 each in reliance on these representations).

3 40. As would subsequently be revealed to Plaintiffs more than six
4 years later, the material representations made in the Offering Documents were
5 false or misleading, including the facts that the EB-5 Loan would be (1) made
6 to the Hotel Debtor as “Borrower;” (2) be secured by a deed of trust on the land
7 owned by Hotel Debtor, and (3) be subordinated to \$19 million at most of
8 additional senior loans.

9 41. These facts alone plausibly satisfy each of the elements of common
10 law fraud under Washington State law. Debtor-Defendants (1) represented an
11 existing fact (the terms of the EB-5 investment, including the purported
12 borrower and capital structure); (2) the facts were material (no investor would
13 invest without knowing these terms); (3) the facts were false (as evidenced by
14 the significant changes to these terms, including replacement of the Borrower
15 entity); (4) the Debtor-Defendants, including Hotel-Debtor, EB-5 Debtor and
16 Mr. Christ knew these facts to be false; (5) the Debtor-Defendants intended for
17 Plaintiffs to act on the false facts to induce Plaintiffs’ investments in the Project;
18 (6) Plaintiffs did not and could not have known these material facts were false;
19 (7) Plaintiffs each relied on these representations in making their individual
20 investment decision; (8) Plaintiffs had a right to rely on these material

1 representations; and (9) Plaintiffs each suffered \$550,000 in direct damages as
2 a result of the loss of their investments.

3 **C. Plaintiffs Have Stated a Claim for Securities Fraud under**
4 **RCW § 21.20.010**

5 42. Count IV of the Complaint asserts a cause of action against each of
6 the Debtor-Defendants for violations of Washington State securities laws.
7 Compl. ¶¶ 117-29. RCW 21.20.010. AP Defendants argue that Plaintiffs have
8 failed to plausibly allege the elements of state law securities claims, including
9 that no Debtor-Defendant could have been a “seller of securities” as defined by
10 the Washington Code. Mot. ¶¶ 80-81. AP Defendants are incorrect, as the
11 Complaint satisfies each of the elements required to plausibly assert a
12 Washington state law securities claim.

13 43. RCW Section 21.20.010 prohibits any person “in connection with
14 the offer, sale or purchase of any security, directly or indirectly: (1) to employ
15 any device, scheme, or artifice to defraud; (2) to make any untrue statement of
16 material fact or to omit to state a material fact necessary in order to make the
17 statement made, in the light of the circumstances under which they are made,
18 not misleading; or (3) to engage in any act, practice or course of business which
19 operates or would operate as a fraud or deceit upon any person. RCW 21.20.010.

20 44. As noted *supra*, FN 2, there is no doubt that EB-5 investments such

1 as Plaintiffs' investments here, constitute "securities" for purposes of federal
2 and state securities laws. *SEC v. Hui Feng*, 935 F.3d 721 (9th Cir. 2019); *Yanlu*
3 *Liu v. Great Ocean Capital Holding, LLC*, 2018 WL 4960231 (Wash. App. Div.
4 1, 2018) (applying Washington State Securities Act to EB-5 investment and
5 rejecting federal securities laws "field preemption" argument).

6 45. Here, Plaintiffs have alleged multiple plausible material
7 misrepresentations in the Offering Documents, including the identity of the EB-
8 5 Loan borrower, the amount of additional permitted senior debt, and the
9 potential cost of the Project. These facts are not "vague allegations" as AP
10 Defendants allege, Mot. ¶ 80, but concrete and specific allegations concerning
11 material facts that unequivocally informed Plaintiffs' decisions to invest in the
12 Project. Moreover, insofar as Plaintiffs have plausibly alleged that each Debtor-
13 Defendant is the alter-ego of Mr. Christ and the other non-debtor State Court
14 Defendant entities, Plaintiffs need not allege that each Debtor-Defendant
15 individually directly solicited the sale of such securities.

16 **III. Plaintiffs' Remaining Claims Have Each Been Adequately Pled**

17 **A. Plaintiffs Have Adequately Pled Breach of Fiduciary Duty and** 18 **Related Aiding and Abetting Breach of Fiduciary Duty Claims**

19 46. AP Defendants' argument that Plaintiffs have failed to adequately
20 allege breach of fiduciary duty by Debtor-Defendants overlooks Plaintiffs'

1 plausible allegation that each Debtor-Defendant has acted as the alter-ego of
2 Mr. Christ and the General Partner and therefore can be held liable as an alter
3 ego for Mr. Christ and/or the General Partner, including for such entities' breach
4 of fiduciary duty to Plaintiffs.

5 47. Under Ninth Circuit law, to state a claim for breach of fiduciary
6 duty, a plaintiff must allege: (1) the existence of a fiduciary duty; (2) breach of
7 that duty; and (3) damage proximately caused by the breach. *Perkumpulan*
8 *Investor Crisis Center Dressel--WBG v. Regal Financial Bancorp, Inc.*, 781 F.
9 Supp. 2d 1098, 1114 (W.D. Wash. 2011).

10 48. Here, the Complaint plausibly alleges that each Debtor-Defendant,
11 as alter ego of the General Partner and Mr. Christ, owed fiduciary duties to
12 Plaintiffs. Specifically, the Complaint alleges that the Debtor-Defendants owed
13 duty of loyalty and care as promoters of the Project. Compl. ¶¶ 99-101. The
14 Complaint alleges that Debtor-Defendants each breached their fiduciary duties
15 through taking the following acts: (1) withdrawing more than \$35 million of
16 equity from the Project, (2) releasing the EB-5 Deed of Trust, and (3) making
17 material misstatements in the Offering Documents regarding the cost of the
18 Project,

19 49. Relatedly, Plaintiffs have satisfied the pleading standards in
20 asserting their claims for aiding and abetting a breach of fiduciary duty. The

1 elements of aiding and abetting a breach of fiduciary duty under Washington
2 law require a showing that the defendant “knows that the other’s conduct
3 constitutes a breach of duty and gives substantial assistance or encouragement
4 to the other.” *Brashkis v. Hyperion Capital Group, LLC*, No. 3:11–CV–05635
5 RBL, 2011 WL 6130787, at *3 (W.D. Wash., Dec. 8, 2011).

6 50. Here, the Complaint alleges that each Debtor-Defendant had full
7 knowledge of the ongoing breaches of fiduciary duty by the General Partner and
8 significantly aided the General Partner in breaching the fiduciary duties. Compl.
9 ¶ 115. Specific examples of this aiding and abetting the breach of fiduciary duty
10 as incorporated by reference, Compl. ¶ 111, include instructing the wiring
11 instructions for Plaintiffs’ investment in the Project to be sent directly to the
12 General Partner’s bank account, Compl. ¶ 42, and releasing the EB-5 Deed of
13 Trust, directly contradicting the promises made in the Offering Documents.
14 Compl. ¶¶ 38, 80.

15 **B. Plaintiffs Have Adequately Pled Facts to Support a Claim**
16 **Under the Washington Consumer Protection Act**

17 51. Plaintiffs have satisfied the elements to plausibly plead a claim
18 under the Washington Consumer Protection Act (the “CPA”). RCW 19.86.020.
19 Claims under the WCPL generally require a plausible showing of five (5)
20 elements: (1) an unfair or deceptive act or practice, (2) occurring in trade or

1 commerce, (3) public interest impact, (4) injury to plaintiffs in their business or
2 property, and (5) causation. *Hangman Ridge Training Stables, Inc. v. Safeco*
3 *Title Ins.*, 105 Wash. 2d 778, 785 (1986).

4 52. ‘AP Defendants’ argument that Plaintiffs have failed to “make any
5 specific factual allegations of misconduct” against the Debtor-Defendants is
6 flatly contradicted by the Complaint. Not only does Count VI of the Complaint
7 incorporate by reference all of the factual allegations set forth in the Complaint,
8 Compl. ¶ 134, but Count VI includes specific factual allegations supporting the
9 CPA claim. These include allegations that the Debtor-Defendants made material
10 misrepresentations, concealed their plans to refinance the Project and release
11 the deed of trust securing the EB-5 Loan and thereby directly caused no less
12 than \$550,000 in damages to each Plaintiff. Compl. ¶¶ 135-45.

13 53. AP Defendants are also incorrect on the law. AP Defendants
14 appear to argue that insofar as Plaintiffs’ investments were a “private transaction
15 for accredited investors through the EB-5 Program,” that the “public interest”
16 prong of the Washington CPA cannot be met. Mot. ¶ 96. But courts applying
17 the Washington CPA have expressly held that a plaintiff alleges a *per se* effect
18 on the public interest by alleging that a defendant violated a statute which
19 contains a legislative declaration or judicial construction of impact upon the
20 public interest. *Robinson v. Conner*, 2010 WL 11565185, at *4 (W.D. Wash.

1 2010) (citing *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 719
2 P.2d 531, 538 (Wash. 1986)). Here, Plaintiffs have plausibly alleged a violation
3 of the Washington State Securities Act, Compl. Count IV, ¶¶ 117-129, an Act
4 which courts have held contains a judicial finding of public interest. *Robinson*
5 *v. Conner*, 2010 WL 11565185, at *4 (W.D. Wash. 2010). Therefore, the
6 Washington CPA claim cannot be dismissed for failing to satisfy the “public
7 interest impact” element, as AP Defendants argue.

8 **IV. The Central Factual Allegations Underlying Plaintiffs’ Claims Are**
9 **Supported by the Factual Record, Not “Flatly Contradicted” As AP**
10 **Defendants Assert**

11 54. AP Defendants go so far as to state that Plaintiffs “fail to identify
12 any specific communication, whether written or oral, in which any Defendant
13 (or even Mr. Christ or the General Partner) claimed that the subordination would
14 be capped at \$19 million.” Mot. ¶ 12. While Plaintiffs did not use the verbatim
15 term “cap” or “capped” in the Complaint, paragraph 39 of the Complaint cites
16 written statements in the Offering Documents, including the statement that
17 “[a]dditional funding for the project is \$19 million in traditional construction
18 loan financing [] and/or additional investment by Michael Christ and investors.”
19 Compl. ¶ 39 (emphasis added). This specific citation to specific disclosures in
20 the Offering Documents is more than enough particularity to satisfy the pleading
standards required to survive a motion to dismiss and flatly contradicts AP

1 Defendants' assertion that Plaintiffs have failed to identify specific written
2 references to the \$19 million amount.

3 55. Assuming *arguendo* that the Court accepts AP Defendants'
4 argument that the Offering Document language does not provide an express cap
5 or limit of \$19 million on additional senior loans (notwithstanding the fact that
6 the Offering Documents stated that "[a]dditional funding for the project is \$19
7 million . . .), Plaintiffs' assertions that they were lead to believe that \$19 million
8 was the maximum amount of additional debt that would potentially
9 subordinated the EB-5 Loan by the Offering Documents and other
10 communications from Mr. Christ, the State Court Defendants and the Debtor-
11 Defendants is clearly a factual issue that must be tested through discovery.
12 Dismissing any cause of action because the language regarding the \$19 million
13 in senior loans is potentially ambiguous would be inappropriate given the
14 potential additional facts regarding this representation.

15 **V. Dismissal, If Granted, Should Afford Plaintiffs the Opportunity to**
16 **Replead**

17 56. If the Court were to conclude that Plaintiffs' claims were
18 insufficiently pled, Plaintiffs respectfully request that any dismissal be without
19 prejudice and that they be afforded an opportunity to replead. "Even if the
20 pleadings were in some respects deficient, Rule 15(a) (applicable to adversary
proceedings, Bankruptcy Rule 7015) provides that 'leave [to amend pleadings]

1 shall be freely given when justice so requires.” *In re Rogstad*, 126 F.3d 1224,
2 1228 (9th Cir. 1997) (citing Fed. R. Bankr. P. 7015). This policy is “to be
3 applied with extreme liberality.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316
4 F.3d 1048, 1051 (9th Cir. 2003); *see also Vess v. Ciba–Geigy Corp. USA*, 317
5 F.3d 1097, 1107 (9th Cir. 2003) (dismissals under Rule 9(b) are “functional[ly]
6 equivalent” to dismissals under Rule 12(b)(6) and should be without prejudice
7 if defects are curable).

8 57. Here, discovery in this adversary proceeding is expected to proceed
9 on the Court’s prior timeline, with a hearing date to adjudicate allowance of
10 Plaintiffs’ claims as asserted in the Complaint tentatively scheduled for June 10,
11 2025. This timeline evidences no undue delay, bad faith or prejudice to the
12 opposing party. To the contrary, this timeline is approximately one year more
13 expedited than the parallel state court proceeding that Plaintiffs have brought
14 against Michael Christ and the other non-Debtor defendants in the State Court
15 Litigation. Furthermore, and as discussed *supra*, should the court find that
16 Plaintiffs have not pled with sufficient particularity, the ongoing discovery will
17 be critical in providing more particularly to support Plaintiffs’ causes of action.
18 As such, Plaintiffs right to amend the Complaint pursuant to Federal Rules of
19 Bankruptcy Procedure 7015 must be preserved.

1 **CONCLUSION**

2 58. For the foregoing reasons, Plaintiffs respectfully request that the
3 Court deny the AP Defendants' Motion to Dismiss in its entirety and permit the
4 parties to proceed with discovery and a hearing with the Court in June, 2025.

5 DATED: March 18, 2025.

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